

In the Matter of _____,
Petitioners,
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LINDA C. TSEU, as Executive
Director of the Hawaii Civil
Rights Commission; JANE DOE,
Complainant,
Respondents.

In the instant petition for declaratory relief, it is alleged that a woman was terminated by her employer because of her husband's arrest and court record. I disagree with the other Civil Rights Commissioners who feel that since she was terminated because of her husband's arrest and court record, her complaint should be

dismissed.

The majority of the Commissioners believe that the statute cannot be interpreted to protect Jane Doe from discrimination. I disagree. If the employer's actions against an employee violate the spirit and purpose of section 378-2(1)(A), HRS, which is to prevent discrimination on the basis of arrest and court record, then the complaint should be accepted for processing. The Legislature felt that eliminating discrimination on this basis was important enough to be specifically included as an Unlawful Discriminatory Practice. To disallow the complaint would be contrary to the legislative intent and purpose of Section 378-2(1)(A), HRS.

I strongly feel that the employer's actions and reasons for the actions should be considered in determining whether the complaint should be dismissed outright, or investigated and processed through the Civil Rights Commission. By analogy, if a person was fired for being married to someone of a different racial or religious background than the employer, this is still discrimination on the basis of race or religion. It is the "root animus" for the unlawful action which should be considered, as this "root animus" is the evil which the statute seeks to eliminate.

It is unfair that a person who is terminated just for being married to someone with an arrest and court record has no protection under the law, while a person with an arrest and court record is entitled to file a complaint, even though both are subjected to the same unlawful treatment which the statute

prohibits, i.e. being discharged because of an arrest and court record. —

Therefore, I would allow the complaint to proceed through the investigative and administrative process in the Civil Rights Commission.

DATED: Honolulu, Hawaii 3-31-94

Daphne E. Barbée-Wooten
DAPHNE E. BARBEE-WOOTEN,
Commissioner

FINAL ORDER ADOPTING IN PART THE HEARINGS EXAMINER'S RECOMMENDED ORDER/In the Matter of _____, Petitioners, LINDA C. TSEU, as Executive Director of the Hawaii Civil Rights Commission; JANE DOE, Complainant, Respondents.